

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 176

Introduced by Senator Denham

(Coauthor: Senator Torlakson)

(Coauthors: Assembly Members Benoit, Bogh, DeVore, Huff, and Jones)

February 9, 2005

An act to amend ~~Sections 13380 and 23612~~ of *Section 13380* of, and to add *Section 23613* to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 176, as amended, Denham. Traffic collision: fatality: testing.

Under existing law, a person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any driving under the influence offense allegedly committed in violation of the statutes.

This bill would extend the implied consent testing requirement to a person who, while driving, is at fault in causing a traffic collision that is the proximate cause of a fatality. The bill would also require a peace officer, if a person is so involved in a collision and refuses to take the test, to serve a notice of an order suspending or revoking the person's privilege to operate a motor vehicle.

Because this bill would increase the level of services imposed on local law enforcement, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13380 of the Vehicle Code is amended
2 to read:
3 13380. (a) If a peace officer serves a notice of an order of
4 suspension pursuant to Section 13388 or ~~paragraph (2) of~~
5 ~~subdivision (c) of Section 23612~~ *subdivision (d) of Section*
6 *23613*, or arrests a person for a violation of Section 23140,
7 23152, or 23153, the peace officer shall immediately forward to
8 the department a sworn report of all information relevant to the
9 enforcement action, including information that adequately
10 identifies the person, a statement of the officer's grounds for
11 belief that the person violated Section 23136, 23140, 23152, or
12 23153, a report of the results of all chemical tests that were
13 conducted on the person or the circumstances constituting a
14 refusal to submit to or complete the chemical testing pursuant to
15 Section 13388 or 23612, a copy of any notice to appear under
16 which the person was released from custody, and, if immediately
17 available, a copy of the complaint filed with the court. For the
18 purposes of this section and subdivision (g) of Section 23612,
19 "immediately" means on or before the end of the fifth ordinary
20 business day following the arrest, except that with respect to
21 Section 13388 only, "immediately" has the same meaning as that
22 term is defined in paragraph (3) of subdivision (b) of Section
23 13388.
24 (b) The peace officer's sworn report shall be made on forms
25 furnished or approved by the department.
26 (c) For the purposes of this section, a report prepared pursuant
27 to subdivision (a) and received pursuant to subdivision (a) of
28 Section 1801, is a sworn report when it bears an entry identifying
29 the maker of the document or a signature that has been affixed by
30 means of an electronic device approved by the department.

1 ~~SEC. 2. Section 23612 of the Vehicle Code is amended to~~
2 ~~read:~~

3 *SEC. 2. Section 23613 is added to the Vehicle Code, to read:*

4 *23613. (a) (1) (A) A person who drives a motor vehicle is*
5 *deemed to have given his or her consent to chemical testing of*
6 *his or her blood or breath for the purpose of determining the*
7 *alcoholic content of his or her blood, if while driving, the person*
8 *is at fault in causing a traffic collision that is the proximate*
9 *cause of a fatality. If a blood or breath test, or both, are*
10 *unavailable, then subdivision (d) applies.*

11 *(B) A person who drives a motor vehicle is deemed to have*
12 *given his or her consent to chemical testing of his or her blood or*
13 *urine for the purpose of determining the drug content of his or*
14 *her blood, if while driving, the person is at fault in causing a*
15 *traffic collision that is the proximate cause of a fatality.*

16 *(C) Each driver who is at fault in causing a traffic collision*
17 *that is the proximate cause of a fatality shall submit to testing*
18 *under this section upon the direction of a peace officer.*

19 *(D) The person shall be told that his or her failure to submit*
20 *to, or the failure to complete, the required chemical testing will*
21 *result in a fine, mandatory imprisonment if the person is*
22 *convicted of a violation of Section 23152 or 23153, and (i) the*
23 *suspension of the person's privilege to operate a motor vehicle*
24 *for a period of one year, (ii) the revocation of the person's*
25 *privilege to operate a motor vehicle for a period of two years if*
26 *the refusal occurs within 10 years of a separate violation of*
27 *Section 23103 as specified in Section 23103.5, or of Section*
28 *23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of*
29 *subdivision (c) of Section 192 of the Penal Code that resulted in*
30 *a conviction, or if the person's privilege to operate a motor*
31 *vehicle has been suspended or revoked pursuant to Section*
32 *13353, 13353.1, or 13353.2 for an offense that occurred on a*
33 *separate occasion, or (iii) the revocation of the person's*
34 *privilege to operate a motor vehicle for a period of three years if*
35 *the refusal occurs within 10 years of two or more separate*
36 *violations of Section 23103 as specified in Section 23103.5, or of*
37 *Section 23140, 23152, or 23153, or of Section 191.5 or*
38 *paragraph (3) of subdivision (c) of Section 192 of the Penal*
39 *Code, or any combination thereof, that resulted in convictions, or*
40 *if the person's privilege to operate a motor vehicle has been*

1 *suspended or revoked two or more times pursuant to Section*
2 *13353, 13353.1, or 13353.2 for offenses that occurred on*
3 *separate occasions, or if there is any combination of those*
4 *convictions or administrative suspensions or revocations.*

5 (2) (A) *If the person, while driving, is at fault in causing a*
6 *traffic collision that is the proximate cause of a fatality, the*
7 *person has the choice of whether the test shall be of his or her*
8 *blood or breath and the officer shall advise the person that he or*
9 *she has that choice. If the person is incapable, or states that he*
10 *or she is incapable, of completing the chosen test, the person*
11 *shall submit to the remaining test. If a blood or breath test, or*
12 *both, are unavailable, then subdivision (d) applies.*

13 (B) *If the person is subsequently lawfully arrested for driving*
14 *under the influence of any drug or the combined influence of an*
15 *alcoholic beverage and any drug, the person has the choice of*
16 *whether the test shall be of his or her blood, breath, or urine, and*
17 *the officer shall advise the person that he or she has that choice.*

18 (C) *A person who chooses to submit to a breath test may also*
19 *be requested to submit to a blood or urine test if the officer has*
20 *reasonable cause to believe that the person was driving under*
21 *the influence of a drug or the combined influence of an alcoholic*
22 *beverage and a drug and if the officer has a clear indication that*
23 *a blood or urine test will reveal evidence of the person being*
24 *under the influence. The officer shall state in his or her report the*
25 *facts upon which that belief and that clear indication are based.*
26 *The person has the choice of submitting to and completing a*
27 *blood or urine test, and the officer shall advise the person that he*
28 *or she is required to submit to an additional test and that he or*
29 *she may choose a test of either blood or urine. If the person*
30 *arrested either is incapable, or states that he or she is incapable,*
31 *of completing either chosen test, the person shall submit to and*
32 *complete the other remaining test.*

33 (3) *If the person, while driving, is at fault in causing a traffic*
34 *collision that is the proximate cause of a fatality, and, because of*
35 *the need for medical treatment, the person is first transported to*
36 *a medical facility where it is not feasible to administer a*
37 *particular test of, or to obtain a particular sample of, the*
38 *person's blood, breath, or urine, the person has the choice of*
39 *those tests that are available at the facility to which that person*
40 *has been transported. In that case, the officer shall advise the*

1 *person of those tests that are available at the medical facility and*
2 *that the person's choice is limited to those tests that are*
3 *available.*

4 *(4) The officer shall also advise the person that he or she does*
5 *not have the right to have an attorney present before stating*
6 *whether he or she will submit to a test or tests, before deciding*
7 *which test or tests to take, or during administration of the test or*
8 *tests chosen, and that, in the event of refusal to submit to a test or*
9 *tests, the refusal may be used against him or her in a court of*
10 *law.*

11 *(5) A person who is unconscious or otherwise in a condition*
12 *rendering him or her incapable of refusal is deemed not to have*
13 *withdrawn his or her consent and a test or tests may be*
14 *administered whether or not the person is told that his or her*
15 *failure to submit to, or the noncompletion of, the test or tests will*
16 *result in the suspension or revocation of his or her privilege to*
17 *operate a motor vehicle. A person who is dead is deemed not to*
18 *have withdrawn his or her consent and a test or tests may be*
19 *administered at the direction of a peace officer.*

20 *(b) A person who is afflicted with hemophilia is exempt from*
21 *the blood test required by this section.*

22 *(c) A person who is afflicted with a heart condition and is*
23 *using an anticoagulant under the direction of a licensed*
24 *physician and surgeon is exempt from the blood test required by*
25 *this section.*

26 *(d) If a driver who is at fault in causing a traffic collision that*
27 *is the proximate cause of a fatality refuses or fails to complete a*
28 *chemical test or tests, the peace officer, acting on behalf of the*
29 *department, shall serve the notice of the order of suspension or*
30 *revocation of the person's privilege to operate a motor vehicle*
31 *personally on the person. The notice shall be on a form provided*
32 *by the department.*

33 *(e) If the peace officer serves the notice of the order of*
34 *suspension or revocation of the person's privilege to operate a*
35 *motor vehicle, the peace officer shall take possession of all*
36 *driver's licenses issued by this state that is held by the person.*
37 *The temporary driver's license shall be an endorsement on the*
38 *notice of the order of suspension and shall be valid for 30 days*
39 *from the date of accident.*

1 (f) (1) The peace officer shall immediately forward a copy of
2 the completed notice of suspension or revocation form and any
3 driver's license taken into possession under subdivision (e), with
4 the report required by Section 13380, to the department. If the
5 person submitted to a blood or urine test, the peace officer shall
6 forward the results immediately to the appropriate forensic
7 laboratory. The forensic laboratory shall forward the results of
8 the chemical tests to the department within 15 calendar days of
9 the date of the arrest.

10 (2) (A) Notwithstanding any other provision of law, a
11 document containing data prepared and maintained in the
12 governmental forensic laboratory computerized database system
13 that is electronically transmitted or retrieved through public or
14 private computer networks to or by the department is the best
15 available evidence of the chemical test results in all
16 administrative proceedings conducted by the department. In
17 addition, any other official record that is maintained in the
18 governmental forensic laboratory, relates to a chemical test
19 analysis prepared and maintained in the governmental forensic
20 laboratory computerized database system, and is electronically
21 transmitted and retrieved through a public or private computer
22 network to or by the department is admissible as evidence in the
23 department's administrative proceedings. In order to be
24 admissible as evidence in administrative proceedings, a
25 document described in this subparagraph shall bear a
26 certification by the employee of the department who retrieved the
27 document certifying that the information was received or
28 retrieved directly from the computerized database system of a
29 governmental forensic laboratory and that the document
30 accurately reflects the data received or retrieved.

31 (B) Notwithstanding any other provision of law, the failure of
32 an employee of the department to certify under subparagraph (A)
33 is not a public offense.

34 (g) A preliminary alcohol screening test that indicates the
35 presence or concentration of alcohol based on a breath sample
36 in order to establish reasonable cause to believe the person was
37 driving a vehicle in violation of Section 23140, 23152, or 23153
38 is a field sobriety test and may be used by an officer as a further
39 investigative tool.

(h) If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol or drugs, or a combination of alcohol and drugs. The person's obligation to submit to a blood, breath, or urine test, as required by this section, for the purpose of determining the alcohol or drug content of that person's blood, is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

~~23612. (a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, or if, while driving, is at fault in causing a traffic collision that is the proximate cause of a fatality. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.~~

~~(B) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or urine for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, or if, while driving, is at fault in causing a traffic collision that is the proximate cause of a fatality.~~

~~(C) (i) Except as provided in clause (ii), the testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.~~

~~(ii) Each driver who is at fault in causing a traffic collision that is the proximate cause of a fatality shall submit to testing under this section upon the direction of a peace officer.~~

~~(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required chemical testing will result in a fine, mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153, and (i) the~~

1 ~~suspension of the person's privilege to operate a motor vehicle~~
2 ~~for a period of one year, (ii) the revocation of the person's~~
3 ~~privilege to operate a motor vehicle for a period of two years if~~
4 ~~the refusal occurs within seven years of a separate violation of~~
5 ~~Section 23103 as specified in Section 23103.5, or of Section~~
6 ~~23140, 23152, or 23153, or of Section 191.5 or paragraph (3) of~~
7 ~~subdivision (e) of Section 192 of the Penal Code that resulted in~~
8 ~~a conviction, or if the person's privilege to operate a motor~~
9 ~~vehicle has been suspended or revoked pursuant to Section~~
10 ~~13353, 13353.1, or 13353.2 for an offense that occurred on a~~
11 ~~separate occasion, or (iii) the revocation of the person's privilege~~
12 ~~to operate a motor vehicle for a period of three years if the~~
13 ~~refusal occurs within seven years of two or more separate~~
14 ~~violations of Section 23103 as specified in Section 23103.5, or of~~
15 ~~Section 23140, 23152, or 23153, or of Section 191.5 or~~
16 ~~paragraph (3) of subdivision (e) of Section 192 of the Penal~~
17 ~~Code, or any combination thereof, that resulted in convictions, or~~
18 ~~if the person's privilege to operate a motor vehicle has been~~
19 ~~suspended or revoked two or more times pursuant to Section~~
20 ~~13353, 13353.1, or 13353.2 for offenses that occurred on~~
21 ~~separate occasions, or if there is any combination of those~~
22 ~~convictions or administrative suspensions or revocations.~~

23 (2) (A) ~~If the person is lawfully arrested for driving under the~~
24 ~~influence of an alcoholic beverage, or if, while driving, is at fault~~
25 ~~in causing a traffic collision that is the proximate cause of a~~
26 ~~fatality, the person has the choice of whether the test shall be of~~
27 ~~his or her blood or breath and the officer shall advise the person~~
28 ~~that he or she has that choice. If the person arrested either is~~
29 ~~incapable, or states that he or she is incapable, of completing the~~
30 ~~chosen test, the person shall submit to the remaining test. If a~~
31 ~~blood or breath test, or both, are unavailable, then paragraph (2)~~
32 ~~of subdivision (d) applies.~~

33 (B) ~~If the person is lawfully arrested for driving under the~~
34 ~~influence of any drug or the combined influence of an alcoholic~~
35 ~~beverage and any drug, the person has the choice of whether the~~
36 ~~test shall be of his or her blood, breath, or urine, and the officer~~
37 ~~shall advise the person that he or she has that choice.~~

38 (C) ~~A person who chooses to submit to a breath test may also~~
39 ~~be requested to submit to a blood or urine test if the officer has~~
40 ~~reasonable cause to believe that the person was driving under the~~

1 influence of a drug or the combined influence of an alcoholic
2 beverage and a drug and if the officer has a clear indication that a
3 blood or urine test will reveal evidence of the person being under
4 the influence. The officer shall state in his or her report the facts
5 upon which that belief and that clear indication are based. The
6 person has the choice of submitting to and completing a blood or
7 urine test, and the officer shall advise the person that he or she is
8 required to submit to an additional test and that he or she may
9 choose a test of either blood or urine. If the person arrested either
10 is incapable, or states that he or she is incapable, of completing
11 either chosen test, the person shall submit to and complete the
12 other remaining test.

13 (3) If the person is lawfully arrested for an offense allegedly
14 committed in violation of Section 23140, 23152, or 23153, or if,
15 while driving, is at fault in causing a traffic collision that is the
16 proximate cause of a fatality, and, because of the need for medical
17 treatment, the person is first transported to a medical facility
18 where it is not feasible to administer a particular test of, or to
19 obtain a particular sample of, the person's blood, breath, or urine,
20 the person has the choice of those tests that are available at the
21 facility to which that person has been transported. In that case,
22 the officer shall advise the person of those tests that are available
23 at the medical facility and that the person's choice is limited to
24 those tests that are available.

25 (4) The officer shall also advise the person that he or she does
26 not have the right to have an attorney present before stating
27 whether he or she will submit to a test or tests, before deciding
28 which test or tests to take, or during administration of the test or
29 tests chosen, and that, in the event of refusal to submit to a test or
30 tests, the refusal may be used against him or her in a court of law.

31 (5) A person who is unconscious or otherwise in a condition
32 rendering him or her incapable of refusal is deemed not to have
33 withdrawn his or her consent and a test or tests may be
34 administered whether or not the person is told that his or her
35 failure to submit to, or the noncompletion of, the test or tests will
36 result in the suspension or revocation of his or her privilege to
37 operate a motor vehicle. A person who is dead is deemed not to
38 have withdrawn his or her consent and a test or tests may be
39 administered at the direction of a peace officer.

1 ~~(b) A person who is afflicted with hemophilia is exempt from~~
2 ~~the blood test required by this section.~~

3 ~~(c) A person who is afflicted with a heart condition and is~~
4 ~~using an anticoagulant under the direction of a licensed physician~~
5 ~~and surgeon is exempt from the blood test required by this~~
6 ~~section.~~

7 ~~(d) (1) A person lawfully arrested for an offense allegedly~~
8 ~~committed while the person was driving a motor vehicle in~~
9 ~~violation of Section 23140, 23152, or 23153 may request the~~
10 ~~arresting officer to have a chemical test made of the arrested~~
11 ~~person's blood or breath for the purpose of determining the~~
12 ~~alcoholic content of that person's blood, and, if so requested, the~~
13 ~~arresting officer shall have the test performed.~~

14 ~~(2) If a blood or breath test is not available under~~
15 ~~subparagraph (A) of paragraph (1) of subdivision (a), or under~~
16 ~~subparagraph (A) of paragraph (2) of subdivision (a), or under~~
17 ~~paragraph (1) of this subdivision, the person shall submit to the~~
18 ~~remaining test in order to determine the percent, by weight, of~~
19 ~~alcohol in the person's blood. If both the blood and breath tests~~
20 ~~are unavailable, the person shall be deemed to have given his or~~
21 ~~her consent to chemical testing of his or her urine and shall~~
22 ~~submit to a urine test.~~

23 ~~(e) (1) If the person, who has been arrested for a violation of~~
24 ~~Section 23140, 23152, or 23153, refuses or fails to complete a~~
25 ~~chemical test or tests, or requests that a blood or urine test be~~
26 ~~taken, the peace officer, acting on behalf of the department, shall~~
27 ~~serve the notice of the order of suspension or revocation of the~~
28 ~~person's privilege to operate a motor vehicle personally on the~~
29 ~~arrested person. The notice shall be on a form provided by the~~
30 ~~department.~~

31 ~~(2) If a driver who is at fault in causing a traffic collision that~~
32 ~~is the proximate cause of a fatality refuses or fails to complete a~~
33 ~~chemical test or tests, the peace officer, acting on behalf of the~~
34 ~~department, shall serve the notice of the order of suspension or~~
35 ~~revocation of the person's privilege to operate a motor vehicle~~
36 ~~personally on the person. The notice shall be on a form provided~~
37 ~~by the department.~~

38 ~~(f) If the peace officer serves the notice of the order of~~
39 ~~suspension or revocation of the person's privilege to operate a~~
40 ~~motor vehicle, the peace officer shall take possession of all~~

1 driver's licenses issued by this state that is held by the person.
2 The temporary driver's license shall be an endorsement on the
3 notice of the order of suspension and shall be valid for 30 days
4 from the date of arrest or accident.

5 (g) (1) The peace officer shall immediately forward a copy of
6 the completed notice of suspension or revocation form and any
7 driver's license taken into possession under subdivision (f), with
8 the report required by Section 13380, to the department. If the
9 person submitted to a blood or urine test, the peace officer shall
10 forward the results immediately to the appropriate forensic
11 laboratory. The forensic laboratory shall forward the results of
12 the chemical tests to the department within 15 calendar days of
13 the date of the arrest.

14 (2) (A) Notwithstanding any other provision of law, a
15 document containing data prepared and maintained in the
16 governmental forensic laboratory computerized database system
17 that is electronically transmitted or retrieved through public or
18 private computer networks to or by the department is the best
19 available evidence of the chemical test results in all
20 administrative proceedings conducted by the department. In
21 addition, any other official record that is maintained in the
22 governmental forensic laboratory, relates to a chemical test
23 analysis prepared and maintained in the governmental forensic
24 laboratory computerized database system, and is electronically
25 transmitted and retrieved through a public or private computer
26 network to or by the department is admissible as evidence in the
27 department's administrative proceedings. In order to be
28 admissible as evidence in administrative proceedings, a
29 document described in this subparagraph shall bear a certification
30 by the employee of the department who retrieved the document
31 certifying that the information was received or retrieved directly
32 from the computerized database system of a governmental
33 forensic laboratory and that the document accurately reflects the
34 data received or retrieved.

35 (B) Notwithstanding any other provision of law, the failure of
36 an employee of the department to certify under subparagraph (A)
37 is not a public offense.

38 (h) A preliminary alcohol screening test that indicates the
39 presence or concentration of alcohol based on a breath sample in
40 order to establish reasonable cause to believe the person was

1 ~~driving a vehicle in violation of Section 23140, 23152, or 23153~~
2 ~~is a field sobriety test and may be used by an officer as a further~~
3 ~~investigative tool.~~

4 (i) ~~If the officer decides to use a preliminary alcohol screening~~
5 ~~test, the officer shall advise the person that he or she is requesting~~
6 ~~that person to take a preliminary alcohol screening test to assist~~
7 ~~the officer in determining if that person is under the influence of~~
8 ~~alcohol or drugs, or a combination of alcohol and drugs. The~~
9 ~~person's obligation to submit to a blood, breath, or urine test, as~~
10 ~~required by this section, for the purpose of determining the~~
11 ~~alcohol or drug content of that person's blood, is not satisfied by~~
12 ~~the person submitting to a preliminary alcohol screening test. The~~
13 ~~officer shall advise the person of that fact and of the person's~~
14 ~~right to refuse to take the preliminary alcohol screening test.~~

15 SEC. 3. If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.